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MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 30th September, 1964

S.O. 3530.—The following Order made by the President is published for general information.

ORDER

Whereas in a petition dated the 1st January, 1964, addressed to the President of India by Shri V. Narayanasamy, a member of the Legislative Assembly of Pondicherry, functioning immediately before the constitution of the present Legislative Assembly, a question was raised as to whether Shri Edouart Goubert, a member of the Assembly so functioning had become disqualified for being such a member by reason of his holding the office of Mayor of Pondicherry Municipality;

And whereas the opinion of the Election Commission has been obtained on the said question, a copy of which opinion is annexed hereto;

Now, therefore, I, Sarvapalli Radhakrishnan, President of India, in exercise of the powers conferred upon me by section 14 of the Government of Union Territories Act, 1963 (20 of 1963), do hereby decide, in accordance with the opinion of the Election Commission, that the said Shri Edouart Goubert had not become disqualified for being a member of the Legislative Assembly of Pondicherry functioning immediately before the constitution of the present Legislative Assembly by reason of his holding the office of Mayor of Pondicherry.

Rashtrapati Bhavan,
New Delhi.

Sd./- S. RADHAKRISHNAN,
President of India.

The 28th September, 1964.

ANNEXURE

ELECTION COMMISSION, INDIA

Opinion.

The question whether Shri Edouart Goubert, a member of the Legislative Assembly of Pondicherry, has become disqualified for being such member under

the provisions of sub-section (1) of section 14 of the Government of Union Territories Act, 1963, has been raised before the President in a petition addressed to him by Shri V. Narayanasamy, another member of the same Assembly, and in pursuance of sub-section (4) of the said section, the Election Commission has been asked by the President to give its opinion on the question.

The facts stated in the petition are as follows. Shri Goubert was elected a member of the erstwhile Representative Assembly of Pondicherry in July, 1959. Subsequently, at the municipal elections held on the 29th October, 1961, he was elected as a member of the Pondicherry Municipal Council and a few days later he was elected as Mayor of Pondicherry at a meeting of the municipal councillors of that commune. In July 1963, he was appointed Chief Minister for the Union territory but even thereafter he did not relinquish his office of Mayor. According to the petitioner, the Mayor of Pondicherry Municipal Council receives from the Municipal Council a salary of Rs. 300 per mensem and is also provided with a car. The post is an executive post and all the affairs of the Municipal Council are conducted and controlled by him. It is urged by the petitioner that in these circumstances Shri Goubert is holding an office of profit under the Government of Pondicherry and has, consequently, become disqualified for being a member of the Pondicherry Legislative Assembly.

It has to be mentioned here that the Government of Union Territories Act, 1963, providing for the establishment of a Legislative Assembly in Pondicherry was enacted by Parliament only last year and was brought into force in the Union territory of Pondicherry on the 1st July, 1963. Section 54(2)(c) of this Act provided that every person who, immediately before the commencement of the Act, was a member elected from a constituency to fill a seat in the Representative Assembly of Pondicherry shall, on and from such commencement, represent the assembly constituency of the same name in the Legislative Assembly of the Union Territory and accordingly, the Legislative Assembly of the Union Territory shall, without any further action or step being taken in this behalf, be deemed to be duly constituted. The proviso to this sub-section made one single exception; and that was that a person who, immediately before the commencement of the Act, was a member of the Representative Assembly of Pondicherry but not a citizen of India would not become a member of the Legislative Assembly of Pondicherry.

On receipt of the reference from the President, the Election Commission obtained from the Government of Pondicherry a copy of the law regulating the municipalities in Pondicherry. This is contained in a Decree dated the 12th March, 1880, as subsequently amended. The Municipal Council of Pondicherry consists of 18 members, all of whom are elected. Section 3 of the Decree *inter alia* lays down that "the duties of the Mayor shall be honorary", presumably meaning that the Mayor will not be entitled to any emoluments for performing his functions. Section 15 prescribes the manner in which the members of the Municipal Council will elect the Mayor. This election is final and not subject to the approval of the Government or of any other authority. There is, however, section 19 which empowers "the Governor" (now to be construed as a reference to the Lieutenant Governor of Pondicherry) to suspend the Mayor for a period not exceeding 3 months and to dismiss him. Under section 38 he is "under the control of the Superior Administration" in regard to the performance of certain specified functions.

The statement in the petition that the Mayor receives a monthly salary of Rs. 300 and a car for his use from the Municipal Council has been ascertained to be incorrect. The Administration has sent a copy of the Municipal Council's proceedings of the 29th May, 1947, from which it is clear that what the Mayor does get from the Municipal Council is "Rs. 3,000 per year as entertainment allowance payable in twelve instalments", or in other words an allowance of Rs. 250 per month.

The question to consider is therefore whether, in the circumstances detailed above, the office of the Mayor of Pondicherry is (i) an office of profit and (ii) under the Government of Pondicherry. It can be urged that the monthly allowance of Rs. 250 is essentially a compensatory allowance which would just enable the Mayor to meet the heavy expenses of entertainment normally devolving on a dignitary in that position. Even assuming that there might be a small balance left over which is technically sufficient to make the office one of profit, it is clear that the Mayor is not indebted to the Government in any way for securing the office. He is elected Mayor by a body of municipal councillors all of whom are themselves elected by the citizens. In order to become effective, the election does not require the approval or concurrence of the Government. Neither the

power of control over the Mayor vested in the Government, nor even the power of dismissal which would obviously be exercisable only in extreme cases and for good and sufficient reason, would, in my opinion, be sufficient to make an elective office of this type fall in the category of offices under the Government.

The Election Commission accordingly tenders the opinion that Shri Edouart Goubert is not disqualified for being a member of the Legislative Assembly of Pondicherry by reason of his holding the office of Mayor of Pondicherry. Even if it is capable of being regarded as an office of profit by virtue of the allowance attached to it cannot be regarded as an office under the Government.

Sd./- K. V. K. SUNDARAM,
Chief Election Commissioner.

New Delhi,
April 15, 1964.

[No. G. II (POND) 551/4/64.]

HARI SHARMA, Spl. Secy.
30-9-1964.

